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United Nations Commission on International Trade Law
Working Group V (Insolvency Law)
Fifty-third session
New York, 7–11 May 2018

Annotated provisional agenda for the fifty-third session of Working Group V (Insolvency Law)

I. Provisional agenda

1. Opening of the Working Group session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of insolvency topics.
5. Other business.
6. Adoption of the report of the Working Group.

II. Composition of the Working Group

1. The Working Group is composed of the following States: Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czechia (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), the United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019).

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where

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the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The fifty-third session of Working Group V (Insolvency Law) is scheduled to be held in New York from Monday 7 May to Friday 11 May 2018 (five working days). Meeting hours will be from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m., except on the first day of the session, Monday 7 May 2018, when the meeting will commence at 10.30 a.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Consideration of insolvency topics

1. Background information

(a) Facilitating the cross-border insolvency of enterprise groups

5. At its forty-fourth session (December 2013), the Working Group agreed to continue its work on cross-border insolvency of enterprise groups[1] by developing provisions on a number of issues, some of which would extend the existing provisions of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide) and involve reference to the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation. The Working Group discussed this topic at its forty-fifth (April 2014) (A/CN.9/803), forty-sixth (December 2014) (A/CN.9/829), forty-seventh (May 2015) (A/CN.9/835), forty-eighth (December 2015) (A/CN.9/864), forty-ninth (May 2016) (A/CN.9/870), fiftieth (December 2016) (A/CN.9/898), fifty-first (May 2017) (A/CN.9/903) and fifty-second (December 2017) (A/CN.9/931) sessions.

6. At its forty-fifth, forty-sixth and forty-seventh sessions, the Working Group considered the goals of a text facilitating the cross-border insolvency of enterprise groups; the key elements of such a text, including those that might be based upon part three of the UNCITRAL Legislative Guide on Insolvency Law and on the UNCITRAL Model Law on Cross-Border Insolvency; and the form that the text might take, noting that some of the key elements lent themselves to being developed as a model law, while others were more in the nature of provisions that might be included in a legislative guide.

7. At its forty-eighth session, the Working Group agreed a set of key principles for a regime to address cross-border insolvency in the context of enterprise groups and considered a number of draft provisions addressing three main areas of: (a) coordination and cooperation of insolvency proceedings relating to an enterprise group; (b) elements needed for the development and approval of a group insolvency solution involving multiple entities; and (c) the use of what are known as "synthetic proceedings" in lieu of commencing non-main proceedings. Two additional supplemental areas were also considered: (d) the use of "synthetic proceedings" in lieu of commencing main proceedings, and (e) approval of a group insolvency solution on a more streamlined basis by reference to the adequate protection of the interests of creditors of affected group members.

[1] A/CN.9/763, paras. 13–14; A/CN.9/798, para. 16; see the mandate given by the Commission at its forty-third session (2010): *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17, para. 259(a)).

8. At its forty-ninth session, the Working Group considered a consolidated draft legislative text incorporating the agreed key principles and draft provisions addressing the five areas indicated in paragraph 7. That draft text was revised following the forty-ninth session to include a number of the key principles as draft legislative provisions and was considered at the fiftieth, fifty-first and fifty-second sessions. It has been further revised for consideration at the fifty-third session.

(b) Recognition and enforcement of insolvency-related judgments

9. At its forty-seventh session (2014), the Commission approved a mandate for Working Group V to develop a model law or model legislative provisions providing for the recognition and enforcement of insolvency-related judgments.[2] The Working Group discussed this topic at its forty-sixth (December 2014) (A/CN.9/829), forty-seventh (May 2015) (A/CN.9/835), forty-eighth (December 2015) (A/CN.9/864), forty-ninth (May 2016) (A/CN.9/870), fiftieth (December 2016) (A/CN.9/898), fifty-first (May 2017) (A/CN.9/903) and fifty-second (December 2017) (A/CN.9/931) sessions.

10. At its forty-sixth session, the Working Group identified a number of key issues to be addressed in a draft instrument, which it was agreed should be developed as a stand-alone model law, as opposed to forming part of the Model Law. The Working Group had a preliminary exchange of views on a first draft of a model law at its forty-seventh session, with further draft texts revised in accordance with the Working Group's deliberations and decisions being considered at the forty-eighth, forty-ninth, fiftieth, fifty-first and fifty-second sessions.

11. Following the fifty-second session, the draft model law was circulated to governments for comment. While those comments will be provided to the fifty-first session of the Commission (25 June–13 July 2018), any issues requiring further consideration of the draft text by the Working Group will be raised orally at the fifty-third session.

(c) Insolvency of micro, small and medium-sized enterprises (MSMEs)

12. At its forty-sixth session (2013), the Commission requested Working Group V to conduct, at its Spring 2014 session, a preliminary examination of issues relevant to the insolvency of MSMEs, and in particular to consider whether the UNCITRAL Legislative Guide on Insolvency Law provided sufficient and adequate solutions for MSMEs. If it did not, the Working Group was requested to consider what further work and potential work product might be required to streamline and simplify insolvency procedures for MSMEs. Its conclusions on those MSME issues were to be included in its progress report to the Commission in 2014 in sufficient detail to enable the Commission to consider what, if any, future work might be required.[3]

13. At its forty-fifth session (April 2014), Working Group V considered the topic as requested and agreed that the issues facing MSMEs were not entirely novel and that solutions for them should be developed in light of the key insolvency principles and the guidance already provided by the Legislative Guide. The Working Group further agreed that it would not be necessary to wait for the results of the work being done by Working Group I in order to commence the study of insolvency regimes for MSMEs. As to the form that work might take, the Working Group agreed that, while such work might form an additional part to the Legislative Guide, no firm conclusion on that point could be taken in advance of undertaking a thorough analysis of the issues at stake.[4]

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[2] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 155.

[3] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 326.

[4] Report of Working Group V on the work of its forty-fifth session, A/CN.9/803, para. 14.

14. At its forty-seventh session (2014), the Commission gave Working Group V a mandate to undertake work on the insolvency of MSMEs as a next priority, following completion of the work on facilitating the cross-border insolvency of multinational enterprise groups and recognition and enforcement of insolvency-related judgments.[5]

15. At its forty-ninth session (May 2016), Working Group V noted the importance of MSME insolvency and the wide support that had been expressed in favour of work being undertaken on that topic. The Working Group agreed to recommend that the Commission should clarify, at its forty-ninth session (2016), the mandate given at its forty-seventh session to Working Group V as follows: "Working Group V is mandated to develop appropriate mechanisms and solutions, focusing on both natural and legal persons engaged in commercial activity, to resolve the insolvency of MSMEs. While the key insolvency principles and the guidance provided by the UNCITRAL Legislative Guide on Insolvency Law should be the starting point for discussions, the Working Group should aim to tailor the mechanisms already provided in the Legislative Guide to specifically address MSMEs and develop new and simplified mechanisms as required, taking into account the need for those mechanisms to be equitable, fast, flexible and cost efficient. The form the work might take should be decided at a later time based on the nature of the various solutions that were being developed."[6]

16. At its forty-ninth session (2016), the Commission clarified the mandate of Working Group V with respect to the insolvency of MSMEs in accordance with the wording of the recommendation set forth in paragraph 15.[7]

17. At its fifty-first session, the Working Group held a preliminary discussion on how the work on this topic might be developed (A/CN.9/903, paras. 13–14). The Working Group will have before it document A/CN.9/WG.V/WP.159 for further consideration of this topic at its fifty-third session.

2. Documentation for the fifty-third session

18. The Working Group will have before it notes by the Secretariat on (a) recognition and enforcement of insolvency-related judgments: the draft model law (A/CN.9/WG.V/WP.156) and guide to enactment of the draft model law (A/CN.9/WG.V/WP.157); (b) facilitating the cross-border insolvency of enterprise groups (A/CN.9/WG.V/WP.158); and (c) insolvency of micro, small and medium-sized enterprises (A/CN.9/WG.V/WP.159).

19. In planning the attendance of their representatives, States and interested organizations may wish to note the following background documents:

(a) The UNCITRAL Legislative Guide on Insolvency Law (2004), including parts three (2010) and four (2013);

(b) The UNCITRAL Model Law on Cross-Border Insolvency (1997) and Guide to Enactment and Interpretation (2013);

(c) Reports of Working Group V on the work of its forty-fifth (April 2014) (A/CN.9/803), forty-sixth (December 2014) (A/CN.9/829), forty-seventh (May 2015) (A/CN.9/835), forty-eighth (December 2015) (A/CN.9/864), forty-ninth (May 2016) (A/CN.9/870), fiftieth (December 2016) (A/CN.9/898), fifty-first (May 2017) (A/CN.9/903) and fifty-second (A/CN.9/931) sessions;

(d) Cross-border recognition and enforcement of insolvency-related judgments, notes by the Secretariat: A/CN.9/WG.V/WP.126, A/CN.9/WG.V/WP.130, A/CN.9/WG.V/WP.135, A/CN.9/WG.V/WP.138, A/CN.9/WG.V/WP.140,

[5] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 156.

[6] Report of Working Group V on the work of its forty-ninth session, A/CN.9/870, para. 87.

[7] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17), para. 246.

A/CN.9/WG.V/WP.143 and Add.1, A/CN.9/WG.V/WP.145, A/CN.9/WG.V/WP.150 and A/CN.9/WG.V/WP.151;

(e) Facilitating the cross-border insolvency of enterprise groups, notes by the Secretariat: A/CN.9/WG.V/WP.120, A/CN.9/WG.V/WP.124, A/CN.9/WG.V/WP.128, A/CN.9/WG.V/WP.133, A/CN.9/WG.V/WP.134, A/CN.9/WG.V/WP.137 and Add.1, A/CN.9/WG.V/WP.142 and Add.1, A/CN.9/WG.V/WP.146 and A/CN.9/WG.V/WP.152;

(f) Insolvency of micro, small and medium-sized enterprises, notes by the Secretariat: A/CN.9/WG.V/WP.121 and A/CN.9/WG.V/WP.147.

20. UNCITRAL documents and publications are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the working papers by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 6. Adoption of the report

21. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-first session of the Commission to be held in New York from 25 June to 13 July 2018. The report will include the main conclusions reached by the Working Group. The substance of the Working Group's deliberations at its meeting on Friday morning will be summarily read out for the record and subsequently incorporated into the report.

IV. Scheduling of meetings

22. The Working Group's fifty-third session will last for five working days. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,[5] the Working Group is expected to hold substantive deliberations in the allocated time. The report is to be adopted at the last meeting of the Working Group (on Friday afternoon).

23. The Working Group may wish to note that its fifty-fourth session is tentatively scheduled to be held in Vienna from 10–14 December 2018.

[5] *Official records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.